

No. 23-3396

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AL OTRO LADO, INC., *et al.*,

Plaintiffs-Appellants,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, *et al.*,

Defendants-Appellees.

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 3:23-cv-01367

APPELLANTS' UNOPPOSED MOTION TO STAY APPEAL

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Pursuant to Federal Rule of Appellate Procedure 27, Plaintiffs-Appellants respectfully move to hold this appeal in abeyance, with status reports due on March 1, 2025, and at 60-day intervals thereafter. In support of this unopposed motion, Plaintiffs-Appellants state the following:

1. This appeal arises from an application for a temporary injunction in which Plaintiffs-Appellants sought to require Defendants-Appellees to comply with their own policies regarding treatment of noncitizens arriving at ports of entry along the U.S. southern border. *See* Opening Br. at 1. That policy was primarily contained in a November 2021 memorandum that required Customs and Border Protection officers to allow “undocumented noncitizens who are encountered at the border line [to] be permitted to wait in line, if they choose, and proceed into the [Port of Entry] for processing as operational capacity permits.” 2-ER-258. The district court denied the injunction, and Plaintiffs-Appellants appealed.

2. This appeal was argued and submitted on May 13, 2024, before a panel of Judges Collins, Thomas, and Johnstone.

3. The legal landscape has changed significantly since Plaintiffs-Appellants filed, briefed, and argued this appeal, and Plaintiffs-Appellants anticipate forthcoming developments are likely to impact this suit as well. The operative provisions of the November 2021 memorandum are currently superseded by President Biden’s June 3, 2024 Proclamation “Securing the Border” and related guidance. *See*

DktEntry 43.1, Notice of Supplemental Authority (June 20, 2024). President Biden subsequently amended that proclamation and changed the requirements for returning to conditions where the November 2021 memorandum would be reinstated, raising the bar for reinstatement of the November 2021 memorandum. *See* Proclamation 10817 of September 27, 2024, Amending Proclamation 10773, 89 Fed. Reg. 80351 (requiring border “encounters” to fall below 1,500-encounters per day for 28 consecutive calendar days, rather than 7 calendar days in the original proclamation). Significantly, Plaintiffs-Appellants anticipate that the current Presidential transition may mean that significant changes will be made to the policies at issue in this case—including the use of CBP One and the November 2021 guidance.

4. Accordingly, on November 22, 2024, Plaintiffs-Appellants filed an unopposed motion in the district court to stay proceedings to preserve party and judicial resources. No. 3:23-cv-1367-AGS-BLM, Dkt. No. 100 (S.D. Cal. Nov. 22, 2024). The district court granted the stay in a text-only order on November 22, 2024, and the case is stayed “until further Court order.” No. 3:23-cv-1367-AGS-BLM, Dkt. No. 101 (S.D. Cal. Nov. 22, 2024). The parties are required to file a status report or move to lift the stay by March 1, 2025.

5. To preserve party and judicial resources, Plaintiffs-Appellants respectfully request the Court hold this appeal in abeyance. While this case is not fully moot because it is currently not “absolutely clear . . . that the activity complained of will

not recur,” there is a substantial likelihood this appeal will be moot in the near future. *Fikre v. Fed. Bureau of Investigation*, 904 F.3d 1033, 1039 (9th Cir. 2018). The best use of judicial resources is to determine what, if any, changes the incoming Presidential administration will make to the policies at issue and determine whether those specific policies moot this appeal (or the underlying case from which it arose).

6. Defendants-Appellees agree to the requested stay. Counsel for both parties conferred via email on November 25-27, 2024, and counsel for Defendants-Appellees confirmed that they do not oppose a stay of this appeal.

7. Thus, Plaintiffs-Appellants move this Court to place this appeal in abeyance, with a status report due by March 1, 2025, and at 60-day intervals thereafter.

Dated: December 2, 2024

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 585 words according to the count of Microsoft Word, and pursuant to 9th Circuit Rule 27-1(1)(d), contains 3 pages, excluding the documents excluded from the length limit under Fed. R. App. P. 27(a)(2)(B) and 32(f).

Signature /s/ Stephen M. Medlock

Date 12/2/24

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing documents on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system which accordingly served all counsel of record.

Signature /s/ Stephen M. Medlock

Date 12/2/24